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(ii) Physical capability as required for such taking; or

(iii) The total allocable flow without augmentation by the Commission, using a seven-day, ten-year, low-flow criterion measured at the point of withdrawal or diversion.

(2) *Physical capability* means the capacity of pumps, water lines and appurtenances installed and operable, determined according to sound engineering principles. The physical capability specifically includes plant facilities actually using water, but excludes facilities which may have been installed in anticipation of future plant expansion not yet realized.

(c) Whenever adequate records of legal entitlement for agricultural irrigation purposes are not available to the Commission, such legal entitlement shall be measured by the maximum number of acres under irrigation by the water user at any time during the year ending March 31, 1971, allowing one acre-foot of surface water annually per acre irrigated.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section, there shall be no charge for water made available from storage where:

(1) The cost of the storage facility has or will be otherwise paid for by the user,

(2) Such storage controls a drainage area, and

(3) The use does not exceed the yield of such storage without augmentation from other surface water of the basin.

§ 420.24 Effective date of rates.

Rates and charges shall apply to all water users not exempt hereunder on and after the date of the first impoundment of water for water supply purposes at the Beltzville Reservoir (February 8, 1971), or the effective date hereof, whichever is later.

ENTITLEMENT; MEASUREMENT; BILLING

§ 420.31 Certificate of entitlement.

(a) The Executive Director will issue to each known water user a certificate of entitlement within 30 days after the effective date of these regulations subject to the provisions of paragraph (b). In addition, any other water user may apply for a certificate of entitlement

at any time. A preliminary notice of entitlement shall be issued to each user. Such entitlement shall become final and take effect, unless the user shall file with the Commission, within 20 days after the service of the notice of entitlement, a request for hearing by the Commission. At such hearing the water user may show cause why the proposed entitlement shall not take effect.

(b) The Executive Director shall schedule a hearing to be held not less than ten days after receipt of a request for a hearing by the Commission. Hearings shall be conducted and the results thereof subject to review in accordance with Article 5 of the Commission's rules of practice and procedure.

(c) A final certificate of entitlement will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) of this section. For the purposes of this section, *transfer* shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.

(e) Whenever ownership or possession of land in agricultural use is transferred, a certificate of entitlement with respect to such land shall be deemed to run with the land, so long as the water use continues to be for agricultural irrigation. Upon any such land transfer, the Executive Director will reissue a certificate of entitlement to the new user.

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are

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in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation; or

(2) Where such transfer is merely a result of a change of the name, identify, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.

[42 FR 13544, Mar. 11, 1977, as amended at 59 FR 64571, Dec. 15, 1994]

§ 420.32 Measurement and billing of water taken.

(a) The quantity and volume of waters used by each person shall be determined by meters, or other methods approved by the Commission, installed, maintained and read by or on behalf of the taker. Meters or other methods of measurement shall be subject to approval and inspection by the Commission as to installation, maintenance and reading.

(b) Each user of surface water who is not exceeding the quantity specified in his "certificate of entitlement" shall annually, on or before January 31, file with the Commission, on a form to be prescribed by the Executive Director, a report of the user's physical capability, as defined, permit limitations, and the volume of water used during the preceding year.

(c) Each user of surface water who is taking a quantity of water greater than the amount specified in his "certificate of entitlement" shall report his usage to the Commission on or before April 30, July 31, October 31 and January 31, of each year covering the next preceding calendar quarter, respectively, on forms to be prescribed by the Executive Director. The amount due for water usage in excess of the legal entitlement for each of the first three quarters of a calendar year shall be computed and paid by the user, together with the report.

(d) The Commission will render a statement of the net amount due based on the fourth quarter report, including a negative or positive adjustment, so that the net total billing and payment for four quarters will equal the total water used during the four quarters

less the user's legal entitlement, if any.

§ 420.33 Payment of bills.

The amount due for each quarter shall bear interest at the rate of 1 percent per month for each day it is unpaid beginning 30 days after the due date of the quarterly report for the first three quarters and 30 days after the bill is rendered for the fourth quarter.

CHARGES; EXEMPTIONS

§ 420.41 Schedule of water charges.

The Commission will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges. Until changed, the charge for water shall be as follows:

(a) Six cents per thousand gallons for consumptive use; and

(b) Six-tenths of a mill per thousand gallons for nonconsumptive use.

[42 FR 13544, Mar. 11, 1977, as amended at 43 FR 56655, Dec. 4, 1978]

§ 420.42 Contracts; minimum charge.

Subject to the exclusions for certificates of entitlement and exempt uses, the Executive Director may require contracts for any taking, use, withdrawal or diversion of waters of the basin. Each contract shall provide for a minimum annual payment in accordance with an estimated annual demand schedule, regardless of use, withdrawal or diversion. The failure of any person to execute a contract under this section shall not affect the application of other requirements of this resolution.

§ 420.43 Exempt use.

The following uses shall be exempt from charge:

(a) Non-consumptive uses of less than 1,000 gallons during any day, and less than 100,000 gallons during any quarter.

(b) Ballast water used for shipping purposes.

(c) Water taken, withdrawn or diverted from streams tributary to the river master's gauging station at Montague.

(d) Water taken, withdrawn or diverted below R.M. 38 (the mouth of the Cohansey River) and such proportion of waters taken, diverted or withdrawn